testator's property pending probate of the will to be taken care of or to remove it to another place for safekeeping.

Formerly, at common law, the will itself was the sole source of an executor's title. Probate was merely the evidence of that title. *Wolfe v. Underwood,* 97 Ala., 375; *Shirley v. Healds,* 34 N. H., 407. And in some jurisdictions the executor is still somewhat favored in this respect. *Emanuel v. Norcum,* 7 How. (Miss.), 150; *Thiefes v. Mason,* 55 N. J. Eq., 456. The better view, however, which has been established by statute in many jurisdictions, is that neither executor nor administrator is entitled to exercise power freely, as such, until he has duly qualified in the probate court by giving bond. *Gardner v. Gautt,* 19 Ala., 666; *Davis v. Davis,* 2 Cush. (Mass.), 111. Nor can he sue or be sued, either at law or in equity, until after he has duly qualified. *Wood v. Cosby,* 76 Ala., 557. Notwithstanding the lack of authority of the representative to receive assets before his appointment, his taking possession of the decedant's estate for purposes of immediate protection, custody, and management is somewhat favored in practice; and for whatever assets he thus receives he is chargeable in his representative capacity when his appointment becomes completed. *Head v. Sutton,* 31 Kan., 616. When letters testamentary are issued, they relate back so as to vest the decedant's property in the representative as from the time of death and validate the acts of the representative done in the interim. *Johnson v. Blair,* 132 Ala., 128; but such validation applies only to acts which might properly have been done by a personal representative and the estate ought not to be prejudiced by wrongful and injurious acts performed before one's appointment. *Deuton v. Sanford,* 103 N. Y., 607; *Brown v. Lewis,* 9 R. I., 497.

FRAUD—FALSE REPRESENTATIONS—DUTY OF PURCHASER.—MARTIN V. BURFORD, 181 FED., 922.—*Held,* that where defendants, in order to induce plaintiff to purchase an interest in a salmon packing outfit, falsely represented that the property consisted of a store building and site located in a place remote from that where the bargain was made, and practically inaccessible to plaintiff at the time, and plaintiff had no knowledge concerning such store building and site, except defendant's representations, plaintiff was not bound to exercise diligence to ascertain whether the representations were true or false, but was entitled to rely on the truth thereof, and recover damages for their falsity.

According to the weight of authority, the rule of *caveat emptor* applies, and under ordinary circumstances, the purchaser is required to avoid deception. *Schwabacher v. Riddle,* 99 Ill., 343; *Anderson Foundry, etc., Works v. Meyers,* 15 Ind. App., 385; *Black v. Miller,* 15 Mich., 323; *Wart v. Hoose,* 119 N. Y. Supp., 1107. But this rule calls for only reasonable diligence on the part of the buyer, and what is reasonable diligence is determined by the circumstances of the transaction. *Walsh v. Hall,* 60 N. C., 233; *Watson v. Atwood,* 25 Conn., 313. The rule of *caveat emptor* does not apply where the fact in question is difficult of ascertainment by the purchaser, and is or may be presumed to be peculiarly within the knowledge of the vendor. *White v. Seaver,* 25 Barb.

(N. Y.), 325; *Lewis v. Jewel*, 157 Mass., 345. So an action will lie for fraudulent misrepresentation made by a prospective purchaser of land as to its condition, etc., the land being at a distance from the place where the purchase was made, and the vendor being ignorant of its condition and value, and relying on the truthfulness of such representation. *Mountain v. Day*, 91 Minn., 249; *Hutchenson v. Gorman*, 71 Ark., 305. The representation which constitutes the inducement to purchase must relate to some material matter. *Nounan v. Luther Land Co.*, 81 Cal., 1; *Dingle v. Trash*, 7 Col., 16; *Helden v. Griffin*, 136 Mass., 239.

HUSBAND AND WIFE—ALIENATION OF AFFECTION—EFFECT OF DIVORCE.—HAMILTON V. MCNEILL, 129 N. W., 480 (IA.).—*Held*, that a divorce decree may be set up as a bar in a subsequent action between the guilty party and one who was not a party to the divorce action—the plaintiff in the present case was sueing the defendant for alienating the affections of the plaintiff's wife before the divorce was granted. The plaintiff here was the guilty party in the divorce action and the statute under which this suit was brought provided that the guilty party should lose his rights. Deemer and Ladd, J. J., *dissenting*.

The case under discussion is in opposition to the general American rule and it is generally held that a person cannot avail himself of a decree in an action to which he was not a party; *Robins v. Crutchley*, 1 Wills (Fed.), 124; 1 *Starkie on Ev.*, part 2, 62; and questions in a former action must have been litigated in point of fact, and passed on, to constitute a bar, even when the suit is between the same persons. *Bond v. Markstrum*, 102 Mich., 11. It was held a decree of divorce, *a mensa et thoro*, is not conclusive evidence of a woman's having left her husband's house unjustifiably. *Burleu v. Shannon*, 3 Gray (Mass.), 387, 1 *Greenl. Ev.*, 189. The general English view is in accord with the American and holds it to be a general rule that to make a judgment conclusive as a bar it must have been between the same parties. *Buller, Nisi Prius*, p. 232. There seems to be, however, some ground for the majority opinion in the case under discussion from the general rule that when a party suffers by reason of his own wrong he cannot complain of the result. *Wheeler v. Russell*, 17 Mass., 258; *2nd Chit. Cont.*, 975.

MASTER AND SERVANT—INJURY TO SERVANT—BURDEN OF PROOF.—OLSON V. NEBRASKA TELEPHONE CO. ET AL., 127 N. W., 916 (NEB.).—*Held*, that the court should not instruct the jury that the burden is upon the master to prove his servant was injured in consequence of a danger ordinarily incident to his employment. Sedgwick and Fawcett, J. J., *dissenting;* Letten, J., *dissenting in part.*

Mere proof of an accident to an employee is of itself insufficient to show negligence on the part of the employer. *Wojciechowski v. Spreckels Refining Co.*, 117 Pa. St., 57. Where there is a breaking of a machine in ordinary use, the law will not infer that there was a lack of care on the part of the master. *Green v. Southern Ry. Co.*, 72 S. C., 398. The burden is on the servant to prove that the appliance was defective and that the